

STATE OF VERMONT
PUBLIC SERVICE BOARD

Order entered: 10/11/2007

**CLARIFYING ORDER RE PETITION OF IBM TO AMEND
EEU CUSTOMER CREDIT PROGRAM**

On August 14, 2007, the Public Service Board ("Board") issued an Order approving a petition by International Business Machines, Inc. ("IBM") to alter certain terms of the Energy Efficiency Utility ("EEU") Customer Credit Program. The changes to the program include allowing a customer enrolled in the Customer Credit Program to access 90% of the funds paid into the EEU Fund by that customer, rather than the current 70%. Additionally, customers in the Customer Credit Program are now allowed to use EEU funds for projects that have a 12-month payback period, rather than the previous minimum payback period of 18 months.

On August 21, 2007, the EEU Contract Administrator contacted Board staff regarding the implementation of the changes described above. Specifically, the Contract Administrator requested guidance regarding three issues: (1) at what point customers enrolled in the Customer Credit Program would be allowed to access 90% of the funds rather than 70% of the funds; (2) whether the 90% of the funds eligible to be accessed by customers is net of taxes; and (3) at what point retrofit projects "in the pipeline" would be allowed to meet a 12-month payback rather than the 18-month payback.

On September 17, 2007, the Board issued a memorandum requesting comments on these issues.

On September 28, 2007, IBM filed comments stating that the ability to access 90% of the funds rather than 70% of the funds should be effective as of the date of the Board's August 14 Order and that "payments issued by the Contract Administrator after August 14, 2007 should be issued to the customer at 90% of the amounts paid by the customer." With respect to the issue of taxes, IBM states that, because the issue was not addressed by the Board in its Order or in IBM's petition, "the current practice should be maintained and the amount of funds eligible to be accessed should continue to be net of taxes." Finally, IBM contends that any retrofit projects

submitted to the EEU after August 14, 2007, should be eligible for the 12-month payback calculation.

On September 28, 2007, Green Mountain Power Corporation ("GMP") filed comments stating that the effective date of changes to the program should be August 14, the date of the Board's Order. GMP further states the tax treatment of program funds should be consistent with the practice in effect before the program change. Finally, GMP states its belief that there are no projects "in the pipeline" and that the 12-month payback test should be applied prospectively.

No other comments were filed.

Access to 90% of Funds

In our August 14 Order, we stated that customers in the Customer Credit Program could access 90% of the funds paid into the EEU Fund by that customer. However, we did not specify the date this change would take effect.

IBM recommends that payments issued after August 14, 2007, reflect the 90% of the funds eligible under the changes to the program. We find this recommendation reasonable and direct the Contract Administrator to reflect this change in any payments issued after August 14, 2007.

Taxes

Our August 14 Order does not specify whether the calculation of the 90% of funds that could be accessed by a customer is performed before or after taxes are subtracted from the customer's total remittances. The energy efficiency charge includes two taxes totaling one percent, the gross revenue tax (30 V.S.A. § 22) and the fuel gross receipts or "weatherization" tax (33 V.S.A. § 2503).¹ Historically, customers in the Customer Credit Program paid the energy efficiency charge, including the gross revenue and weatherization taxes, and could then access 70% of their remittance net of taxes. No party has suggested that we change the practice. Consequently, customers in the Customer Credit Program are allowed to access 90% of the funds paid into the EEU Fund by that customer, net of taxes.

1. *See*, Board Rule 5.305(B).

Retrofit Projects

The final issue raised by the Contract Administrator is the question of which retrofit projects would be allowed to meet a 12-month payback rather than an 18-month payback. Currently, IBM, the only customer enrolled in the Customer Credit Program, implements projects throughout the year and files a report in October for Efficiency Vermont's review. Some of the retrofit projects may have been completed in May, for example, and others in September. The question raised by the Contract Administrator is which projects included in the October report would be allowed to meet a 12-month payback and which would be required to meet an 18-month payback.

IBM recommends that any project submitted to the EEU after August 14, 2007, be eligible for the 12-month payback calculation. We find that projects that are initiated after August 14, 2007, should be eligible for a 12-month payback. For any projects initiated prior to August 14, 2007, customers would not have the expectation that they would be allowed to meet a 12-month payback. Consequently, we conclude that projects initiated prior to August 14, 2007, must meet an 18-month payback, while any project submitted to the EEU after August 14, 2007, shall be allowed to meet a 12-month payback.

SO ORDERED.

Dated at Montpelier, Vermont, this 11th day of October, 2007.

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| <u>s/ James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/ David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/ John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: October 11, 2007

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.